

under the control of the same person as defined in this section.

**Subpart B—Identification of Non-Hazardous Secondary Materials That Are Solid Wastes When Used as Fuels or Ingredients in Combustion Units**

**§ 241.3 Standards and procedures for identification of non-hazardous secondary materials that are solid wastes when used as fuels or ingredients in combustion units.**

(a) Except as provided in paragraph (b) of this section, non-hazardous secondary materials that are combusted are solid wastes, unless a petition is submitted to, and a determination granted by, the Regional Administrator pursuant to paragraph (c) of this section. The criteria to be addressed in the petition, as well as the process for making the non-waste determination, are specified in paragraph (c) of this section.

(b) The following non-hazardous secondary materials are not solid wastes when combusted:

(1) Non-hazardous secondary materials used as a fuel in a combustion unit that remain within the control of the generator and that meet the legitimacy criteria specified in paragraph (d)(1) of this section.

(2) The following non-hazardous secondary materials that have not been discarded and meet the legitimacy criteria specified in paragraph (d)(1) of this section when used in a combustion unit (by the generator or outside the control of the generator):

(i) Scrap tires used in a combustion unit that are removed from vehicles and managed under the oversight of established tire collection programs.

(ii) Resinated wood used in a combustion unit.

(3) Non-hazardous secondary materials used as an ingredient in a combustion unit that meet the legitimacy criteria specified in paragraph (d)(2) of this section.

(4) Fuel or ingredient products that are used in a combustion unit, and are produced from the processing of discarded non-hazardous secondary materials and that meet the legitimacy criteria specified in paragraph (d)(1) of

this section, with respect to fuels, and paragraph (d)(2) of this section, with respect to ingredients. The legitimacy criteria apply after the non-hazardous secondary material is processed to produce a fuel or ingredient product. Until the discarded non-hazardous secondary material is processed to produce a non-waste fuel or ingredient, the discarded non-hazardous secondary material is considered a solid waste and would be subject to all appropriate federal, state, and local requirements.

(c) The Regional Administrator may grant a non-waste determination that a non-hazardous secondary material that is used as a fuel, which is not managed within the control of the generator, is not discarded and is not a solid waste when combusted. The criteria and process for making such non-waste determinations includes the following:

(1) Submittal of an application to the Regional Administrator for the EPA Region where the facility combusting the non-hazardous secondary material is located for a determination that the non-hazardous secondary material, even though it has been transferred to a third party, has not been discarded and is indistinguishable in all relevant aspects from a product fuel. The determination will be based on whether the non-hazardous secondary material that has been discarded, is a legitimate fuel as specified in paragraph (d)(1) of this section and on the following criteria:

(i) Whether market participants treat the non-hazardous secondary material as a product rather than as a solid waste;

(ii) Whether the chemical and physical identity of the non-hazardous secondary material is comparable to commercial fuels;

(iii) Whether the non-hazardous secondary material will be used in a reasonable time frame given the state of the market;

(iv) Whether the constituents in the non-hazardous secondary material are released to the air, water or land from the point of generation to the point just prior to combustion of the secondary material at levels comparable to what would otherwise be released from traditional fuels; and

(v) Other relevant factors.

(2) The Regional Administrator will evaluate the application pursuant to the following procedures:

(i) The applicant must submit an application for the non-waste determination addressing the legitimacy criteria in paragraph (d)(1) of this section and the relevant criteria in paragraphs (c)(1)(i) through (v) of this section. In addition, the applicant must also show that the non-hazardous secondary material has not been discarded in the first instance.

(ii) The Regional Administrator will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be published in a newspaper advertisement or radio broadcast in the locality where the facility combusting the non-hazardous secondary material is located, and be made available on EPA's Web site.

(iii) The Regional Administrator will accept public comments on the tentative decision for at least 30 days, and may also hold a public hearing upon request or at his discretion. The Regional Administrator will issue a final decision after receipt of comments and after the hearing (if any).

(iv) If a change occurs that affects how a non-hazardous secondary material meets the relevant criteria contained in this paragraph after a formal non-waste determination has been granted, the applicant must re-apply to the Regional Administrator for a formal determination that the non-hazardous secondary material continues to meet the relevant criteria and, thus is not a solid waste.

(d) Legitimacy criteria for non-hazardous secondary materials.

(1) Legitimacy criteria for non-hazardous secondary materials used as a fuel in combustion units include the following:

(i) The non-hazardous secondary material must be managed as a valuable commodity based on the following factors:

(A) The storage of the non-hazardous secondary material prior to use must not exceed reasonable time frames;

(B) Where there is an analogous fuel, the non-hazardous secondary material must be managed in a manner con-

sistent with the analogous fuel or otherwise be adequately contained to prevent releases to the environment;

(C) If there is no analogous fuel, the non-hazardous secondary material must be adequately contained so as to prevent releases to the environment;

(ii) The non-hazardous secondary material must have a meaningful heating value and be used as a fuel in a combustion unit that recovers energy.

(iii) The non-hazardous secondary material must contain contaminants at levels comparable in concentration to or lower than those in traditional fuels which the combustion unit is designed to burn. Such comparison is to be based on a direct comparison of the contaminant levels in the non-hazardous secondary material to the traditional fuel itself.

(2) Legitimacy criteria for non-hazardous secondary materials used as an ingredient in combustion units include the following:

(i) The non-hazardous secondary material must be managed as a valuable commodity based on the following factors:

(A) The storage of the non-hazardous secondary material prior to use must not exceed reasonable time frames;

(B) Where there is an analogous ingredient, the non-hazardous secondary material must be managed in a manner consistent with the analogous ingredient or otherwise be adequately contained to prevent releases to the environment;

(C) If there is no analogous ingredient, the non-hazardous secondary material must be adequately contained to prevent releases to the environment;

(ii) The non-hazardous secondary material must provide a useful contribution to the production or manufacturing process. The non-hazardous secondary material provides a useful contribution if it contributes a valuable ingredient to the product or intermediate or is an effective substitute for a commercial product.

(iii) The non-hazardous secondary material must be used to produce a valuable product or intermediate. The product or intermediate is valuable if:

(A) The non-hazardous secondary material is sold to a third party, or

(B) The non-hazardous secondary material is used as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(iv) The non-hazardous secondary material must result in products that contain contaminants at levels that are comparable in concentration to or lower than those found in traditional products that are manufactured without the non-hazardous secondary material.

## **PART 243—GUIDELINES FOR THE STORAGE AND COLLECTION OF RESIDENTIAL, COMMERCIAL, AND INSTITUTIONAL SOLID WASTE**

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#### **APPENDIX TO PART 243—RECOMMENDED BIBLIOGRAPHY**

**AUTHORITY:** 42 U.S.C. 6907(a)(3), 6912(a)(1), and 6944(a).

**SOURCE:** 41 FR 6769, Feb. 13, 1976, unless otherwise noted.

### **Subpart A—General Provisions**

#### **§ 243.100 Scope.**

(a) These guidelines are promulgated in partial fulfillment of section 209(a)

of the Solid Waste Disposal Act, as amended (Pub. L. 89-272).

(b) The guidelines apply to the collection of residential, commercial, and institutional solid wastes and street wastes. Explicitly excluded are mining, agricultural, and industrial solid wastes; hazardous wastes; sludges; construction and demolition wastes; and infectious wastes.

(c) The “Requirement” sections contained herein delineate minimum levels of performance required of solid waste collection operations. Under section 211 of the Solid Waste Disposal Act, as amended, and Executive Order 12088, the “Requirement” sections of these guidelines are mandatory for Federal agencies. In addition, they are recommended to State, interstate, regional, and local governments for use in their activities.

(d) The “Recommended procedures” sections are presented to suggest additional actions or preferred methods by which the objectives of the requirements can be realized. The “Recommended procedures” are not mandatory for Federal agencies.

(e) The guidelines apply equally to Federal agencies generating solid waste whether the solid waste is actually collected by a Federally operated or non-Federally operated collection system, except in the case of isolated Federal facilities such as post offices, military recruiting stations, and other offices where local community solid waste collection systems are utilized, which are not within the managerial control of the Federal agency.

(f) The guidelines shall be implemented in those situations where the Federal agency is able to exercise direct managerial control over the collection system through operation of the system or by contracting for collection service. Where non-Federal collection systems are utilized, service contracts should require conformance with the guidelines requirements unless service meeting such requirements is not reasonably available. It is left to the head of the responsible agency to decide how the requirements of the guidelines will be met.

(g) The Environmental Protection Agency will give technical assistance and other guidance to Federal agencies